



**Legislative
Research
Council**

GUIDE TO FORM AND STYLE

FOR

ADMINISTRATIVE RULES OF SOUTH DAKOTA

Introduction

The purpose of this manual is to provide a guide for drafting administrative rules in a form and style that gives uniformity to the Administrative Rules of South Dakota. The guide also provides samples of forms for moving through the process required by the Administrative Procedures Act (SDCL chapter 1-26). This is the process that gives rules the force and effect of law.

Revised – October 17, 2013

TABLE OF CONTENTS

	Page
PREPARATION OF PROPOSED RULES	1
EDITING GUIDELINES.....	5
ABBREVIATIONS	5
CAPITALIZATION.....	5
CATCHLINES	6
CITATIONS TO AUTHORITY	6
COLLATERAL REFERENCES	6
CROSS-REFERENCES	6
DEFINITIONS	6
EXAMPLES	7
FEDERAL REGULATIONS	7
FORMS.....	7
GENDER	7
GENERAL AUTHORITY AND LAW IMPLEMENTED	7
HEADINGS	8
HYPHENATION	8
INCORPORATION BY REFERENCE	8
INTERNAL REFERENCES	9
LAW IMPLEMENTED.....	10
NOTES	10
NUMBERING OF RULES.....	11
NUMBERS, DATES, AND TIME	11
ORGANIZATION.....	12
PUNCTUATION	12
REFERENCES.....	12
SOURCE NOTES	12
STATUTES.....	13
SUBDIVISIONS	13
VERBS	13
WORDS AND PHRASES.....	13
PUBLICATION OF ADOPTED RULES	17
FORM AND STYLE EXAMPLES.....	19
PROCEDURE FOR ADOPTING PERMANENT RULES	41
PROCEDURE FOR ADOPTING EMERGENCY RULES	62

PART I: PREPARATION OF PROPOSED RULES

The Beginning

Start by reading the statutes that grant rule-making authority and the statutes to be implemented with rules. Rules may not exceed or extend the authority given to an agency in statute or correct mistakes in statute. Rules may only carry out the functions delegated by the Legislature (S.D. Const. Art. III, § 26). With the exception of definitions, a statute cannot be repeated in rules (SDCL 1-26-6.1).

Organize requirements in a logical narrative and divide the requirements into sections with one major requirement to a section. Group the sections into chapters and the chapters into articles. Using the guidelines in this manual, put the rules into South Dakota's form and style for administrative rules.

The Language of Rules

It is not legal-sounding language that makes rules legal, but the procedure set out in SDCL chapter 1-26 that is followed to adopt the rules. Rules should clearly state who is responsible for taking an action. Use simple, concrete words and short sentences. Even technical requirements benefit from a simple presentation.

Eliminate jargon. The meaning of the professional language used among colleagues may be lost on the readers of rules. Use active verbs. Passive verbs bury the identity of the subject of the sentence, and it is easy to misunderstand who is required to take an action. Punctuate precisely. The meaning of a rule may hang on the location of a comma. Use no more words than needed. Avoid the repetitive legalistic style that says everything twice: "any and all" or "each and every." State a requirement only once. Use the same words to express the same ideas, but don't give different meanings to one word. Be clear, concise, and consistent.

Remember the rules of grammar. Keep number in mind when matching subjects and verbs. Watch the antecedents of pronouns. A "board" may mean a group of persons, but the word is singular.

Readability

Be concerned about how the rules will look when published. Keep paragraphs and rules short. The headings or catchlines given to rules grab the reader's attention and, when listed in the contents of a chapter, provide a quick index of the rules.

If more than two requirements are listed in a section, use the form of subdivisions. The use of subdivisions allows the reader to easily identify the requirements. If subdivisions need to be broken into more subdivisions and then more subdivisions, consider breaking off and starting a new section. Use no more than three levels of subdivisions. The reader may find it difficult to follow a requirement buried deep in subdivision (1)(a)(i).

Some kinds of requirements are more effectively published as tables instead of subdivisions. The visual impact of a table adds to the readability of rules.

Preparation of the Draft

All rules promulgated, whether new, amended, transferred, or repealed, are subject to legal review and to editing for form, style, and clarity by the Legislative Research Council (SDCL 1-26-6.5). Each rule in a set of proposed rules must be complete. A complete rule includes the number, the catchline, the text, the source note, the general authority, and the law implemented.

Agencies can find copies of their rules on the Internet at the South Dakota home page, <http://www.state.sd.us>. First click on Government Information, then click Legislative Information; page down and click on Administrative Rules of South Dakota. The Internet address for rules is: <http://legis.state.sd.us/rules/index.aspx>. You may wish to set this address as a bookmark for quick access.

The rules are available through the Internet in Microsoft Word format and may be downloaded in a file. Click on "Download file Microsoft Word format" which is located in the upper left part of the screen. The downloaded files contain an entire article; however, you should delete the sections or chapters not affected by the proposed rules.

Proposed rules should be presented in numerical order. The copy should be double-spaced and printed on one side of the paper only. **Please number the pages of your rules.** Amendments, transfers, and repeals of existing rules should be shown in the form used for legislative bills: deletions overstricken followed by insertions underscored. A submission comprised only of new rules does not need to be underscored. However, if new rules are being added to existing rules that are part of the set of proposed rules, the new material must be underscored.

Only those rules that are being amended, transferred, repealed, or adopted should be included in the set. Any change in the title of the article or chapter, change in the catchline of a section in the table of contents, or addition to the table of contents must also be included in the set. The LRC needs two printed copies of the set of proposed rules to conduct its review.

The final draft should be double-spaced, using overstrikes and underscores to show changes from current rules. If the final draft is prepared in Microsoft Word, the agency is requested to include an electronic copy on disk. The LRC needs two printed copies of the final draft. A printed copy of the same final draft, showing changes, is the form in which the rules must be filed with the Secretary of State.

Select Statutory Requirements

An agency may use the Dakota Digital Network (DDN) for rules hearings and an agency may take final action on a rule by telephone conference call. See SDCL 1-25-1.

An agency must serve the following documents on the Interim Rules Review Committee before the agency presents its rules to the committee:

- 1) Minutes of the rules hearing;
- 2) A complete record of the written comments;
- 3) The impact statement on small business;
- 4) The fiscal note;
- 5) Agency financial resource information if the agency proposes a fee or a fee increase; and
- 6) A corrected copy of the rules.

The agency must serve the documents on the committee at least 5 days before the committee meeting. First class mail may be used. All documents must be three-hole punched. Please number the pages. See SDCL 1-26-2.1 and 1-26-4(9).

An agency must serve on the director of the LRC and BFM a Small Business Impact Statement for any proposed set of rules that will have a direct impact on small business. See SDCL 1-26-2.1 and 1-26-4(2) and Form 14 in this guide.

If an agency is proposing a fee or proposing to increase a fee in its rules, the agency is required to submit a fund balance condition statement. The requirements for the fund balance condition statement are found in SDCL 1-26-4.8.

Do not file the rules with the Secretary of State's office before the agency has appeared and presented the rules to the Interim Rules Review Committee.

The rules must be filed in the Secretary of State's office within 75 days of the agency's public hearing for the rules. See SDCL 1-26-4.3.

The public notice must include a disclaimer regarding the approximate cost of the publication pursuant to SDCL 17-2-98. See bottom of Form 6.

PART II: EDITING GUIDELINES

Rules are edited according to the following guidelines:

1. ABBREVIATIONS. Abbreviations may be used if they serve a real purpose and are defined in the definitions section.

2. CAPITALIZATION. Some specific examples commonly found in the text of rules are the following:

Governmental Offices and Institutions. The full proper name of a department or a governmental agency or institution is capitalized: "Department of Labor," "University of South Dakota," "Hughes County Commission," "Environmental Protection Agency," "Board of Pharmacy," "Human Services Center," and "Division of Insurance," but not "department," "university," "county commission," "agency," "board," or "division." The titles of smaller offices or programs within departments are not capitalized. "Supreme Court" and "Legislature" are traditionally capitalized.

Governmental Officials. The titles of state, county, municipal, or district officials are not capitalized: "secretary of agriculture," "county commissioner," "mayor," and "supervisor." Substitutions for official titles, such as "secretary" or "director," are not capitalized. "Governor" is traditionally capitalized.

Acts. The official titles of state or federal acts are capitalized: "Securities and Exchange Act of 1934" and "South Dakota Human Relations Act of 1972." Before capitalizing the name of a particular state act, check the South Dakota Codified Laws to be sure it has a specific name. For an example, see SDCL 20-13-56. A reference to laws on a particular subject, such as "insurance statutes," is not capitalized. The words "Session Laws" are capitalized.

Geographic Names. "Federal," "state," "city," and "county," if not part of a proper name, are not capitalized. Examples of this are: "federal area," "State of South Dakota," "county of Hughes," and "city of Mitchell" in contrast to "Hughes County" and "Rapid City." Other examples are: "rivers," "state parks," and "state game refuges" in contrast to "White River," "Custer State Park," and "Wall Lake State Game Refuge."

Words Used with Numbers or Letters. Words denoting unit and class are capitalized if followed by specific Arabic numbers or specific letters: "Class 3," "Interstate 29," "State Highway 13," "Class 2 misdemeanor," "Class A," "Unit 400A," "several classes," and "third class." The words Fahrenheit and Celsius are capitalized.

Private Associations. The names of professional and private associations, corporations, and businesses are capitalized.

References to SDCL and ARSD. The words "title," "article," "chapter," "section," and "rule" are not capitalized.

Notes Following Rules. All of the words introducing notes after the text of rules are capitalized: "Source," "General Authority," "Cross-Reference," and "Note."

3. CATCHLINES. The title given to each rule is called a catchline. Catchlines help the reader find topics more quickly and provide a quick index to the rules when listed in the contents of the chapter. Catchlines are not part of the rules. Everything in the catchline that is essential to the rule must be repeated in the body of the rule. The catchline should indicate to the reader everything covered by the rule. If it does not, the catchline should be expanded or the rule should be broken into several parts. See the catchlines in the **South Dakota Codified Laws** for examples.

Capitalize only the first letter, proper names, and the first letter following a dash in the catchline. Use a bold font for the section number and all words in the catchline. Use a space both before and after a dash in the catchline:

41:08:01:08.01. Bobcat trapping and hunting season established -- Hunting restrictions -- Tagging requirements. The bobcat trapping and hunting season is open from sunrise on the second Saturday of December to sunset on January 31 in all counties west of the Missouri River. . . .

4. CITATIONS TO AUTHORITY. Citations to South Dakota documents take the following form:

South Dakota Codified Laws	SDCL chapter 2-14 SDCL 2-14-2 SDCL subdivision 2-14-2(18)
Laws of South Dakota (Session Laws)	SL 1982, ch 316, §6
South Dakota Register	10 SDR 76

Other authorities in the text of a rule or in the notes following the text should be cited as follows:

United States Code	42 U.S.C. § 1983
United States Statutes at Large	85 Stat. 1043
Public Laws	Pub. L. No. 94-45 (July 3, 1975)
Code of Federal Regulations	45 C.F.R. § 1060.2 (March 5, 1981)
Federal Register	45 Fed. Reg. 45, 259 (July 31, 1980) (to be codified at 14 C.F.R. § 39.13)

See **GENERAL AUTHORITY AND LAW IMPLEMENTED** and **INCORPORATION BY REFERENCE**.

5. COLLATERAL REFERENCES. See **NOTES**.

6. CROSS-REFERENCES. See **NOTES**.

7. DEFINITIONS. Definitions are shortcuts to help save space in the body of rules. Like a dictionary, definitions simply give the meaning of the terms used in the rules. For example, "board" can be defined to mean "the Board of Medical and Osteopathic Examiners" and

"TANF" to be the acronym for "temporary assistance to needy families." If needed, definitions of terms that are defined in statute may be repeated in the rules. See SDCL 1-26-6.1. Terms defined in statute may also be incorporated by reference into the definitions section of rules.

The definitions section uses the form of subdivisions. See **SUBDIVISIONS**. Substantive provisions are not included with the meanings of the terms defined in the definitions section. For example, "executive secretary" may be defined in the definitions section, but the duties may not be included as part of the definition. The executive secretary's duties must be the subject of a separate rule. If it is impossible or not advisable to separate substantive provisions from a definition, define the term in a substantive rule of its own.

8. EXAMPLES. Avoid the use of examples in the text of a rule. Examples may be placed after the citations for law implemented. See **NOTES**.

9. FEDERAL REGULATIONS. If the task is to adopt the federal regulations as an agency's own, rather than incorporating federal regulations by reference, translate the federal language into plain English as much as possible and break the lengthy federal rules into smaller rules. The added catchlines will make the requirements easier to grasp. Federal rules are often incorporated by reference. See **INCORPORATION BY REFERENCE**.

10. FORMS. Specific forms are not usually adopted as rules. To prescribe a form, give a narrative description of its essential contents in a rule. This allows an agency to change the style of the form without going through the rule-making procedure.

11. GENDER. Gender-neutral terms, such as "applicant," "individual," or "person" should be used as much as possible. "He," "she," "his," "him," or "her" may be used if there is no alternative. Pronouns can sometimes be omitted altogether without losing meaning, or nouns can be repeated. Complete rewriting of a sentence is another method for avoiding the issue of gender. The combinations "he or she" and "his/her" may not be used. "Their" with a singular subject should also not be used. SDCL 2-14-5 addresses the legal effect of words expressing gender.

12. GENERAL AUTHORITY AND LAW IMPLEMENTED. Each rule must contain after its text a citation to the statutory authority that grants the agency the power to adopt rules and a citation to the specific law that is implemented by the rule. The general authority is the statute that authorizes the agency to adopt rules. The law implemented is the statute that the rule administers. In many instances the general authority and the law implemented are the same. Rules are not accepted or effective without these citations. See SDCL 1-26-6.2.

The citations to general authority and law implemented must be to specific sections, including subdivisions of the statutory code, and not to chapters. If there is more than one statute that grants authority for rules or that is implemented, cite all of the statutes. In some instances citations may be to an executive order, to federal law or regulations, or to court cases in addition to South Dakota statutory law. In citing South Dakota Codified Laws, use the form shown in **CITATIONS TO AUTHORITY**.

If there is more than one code section to be cited, do not use the word "and" to separate them, but place commas between the code section numbers:

SDCL 3-3-2, 3-4-2, 3-12-47(19), 3-12-52 to 3-12-55, inclusive.

When citing federal statutes, reference to the United States Code is preferred over reference to the Statutes at Large, and reference to Statutes at Large is preferred over reference to Public Laws. The form is shown in **CITATIONS TO AUTHORITY**.

Use a semicolon to separate references from two or more different sources; for example, SDCL 45-8-17; 9 C.F.R. § 75.1 (January 1, 1998). Single-space all legal citations and reference notes, and place a period at the end.

13. HEADINGS. Titles, articles, and chapters have headings; sections have catchlines. Catchlines may be any length. See **CATCHLINES**. Headings are limited only by the space available for the "headers" at the top of each page of the printed rules.

Each title heading is followed by an index or table of contents, which is a list of the articles in the title. Similarly, each article has an index or table of contents, which is a list of the chapters in the article, and each chapter has an index or table of contents, which is a list of sections in the chapter.

14. HYPHENATION. Hyphens are used in written numbers and fractions and in some adjective forms. Do not hyphenate words beginning with "semi" or "non." Hyphenation of words beginning with "self-" and of the word "secretary-treasurer" is permissible. Check with the dictionary for the hyphenation of particular words. Long-term and short-term should be hyphenated.

Frequently used words that should not be hyphenated include the following: prima facie, percent, prorate, pro rata, ex parte, nonresident, interstate, intrastate, and statewide.

15. INCORPORATION BY REFERENCE. The preferred method for imposing federal regulations or other published standards is to rewrite them as rules. However, if the material is lengthy and is generally available it may be incorporated by reference. Material published by a South Dakota state agency may not be incorporated by reference. See SDCL 1-26-6.6.

If outside materials are incorporated, the rule must describe the portions being adopted, which may be one section or a whole book. If the outside material is updated or amended, an agency continues to be bound by the portions originally adopted until the rules are amended. It is unconstitutional to incorporate material that will be published in the future. For this reason, a date certain is required for the incorporation by reference. See *State v. Johnson*, 84 S.D. 556, 173 N.W.2d 894 (1970).

Under SDCL 1-26-6.6, any publication incorporated must be generally available to the public. A copy of the incorporated material must be supplied to the LRC for review. The LRC will return the copy upon completion of its review and the agency must retain a copy of the incorporated material. See SDCL 1-26-4 and 1-26-6. If an agency cannot afford to buy a copy, the material is not available "at a reasonable cost" as required by SDCL 1-26-6.6.

An agency incorporating outside material is required to have on the cover of the incorporated material a label containing the name of the agency, the filing date of the rule, and reference to the specific rule adopting the outside material. Use of gummed address labels makes it easy to place this information on the incorporated material.

The following is an example of the information needed on the label that is placed on the face of the material incorporated by reference:

Reference to:	§ 20:54:02:01
Filed by:	State Plumbing Commission
Date filed:	11-28-96

(Note: Use the date the rules are filed with the Secretary of State)

If the material incorporated by reference is from the Code of Federal Regulations, the Federal Register, the United States Code, or the Statutes at Large and is cited to the specific provisions incorporated, no reference note is needed below the rule. See **CITATIONS TO AUTHORITY** for the form of material incorporated by reference.

If the material incorporated is not from one of these publications, place a reference note beneath the citations to general authority and law implemented. The reference note must contain the title of the publication, the date of publication, and the author. The note must also contain information about where and at what cost the publication may be obtained. See **NOTES** for an example.

16. INTERNAL REFERENCES. Internal references are references in the text of rules to other sections of the Administrative Rules of South Dakota or to sections of the South Dakota Codified Laws.

Administrative rules may be referred to in the following manner:

- one section: § 55:10:12:04
- two sections: §§ 55:10:12:04 and 55:10:12:05
- three or more sections: §§ 55:10:12:01 to 55:10:12:10, inclusive
- a subdivision: subdivision 55:10:12:01(3)
- sections connected by "or": § 55:10:12:04 or 55:10:12:05

Codified laws may be referred to in the following manner:

- one section: SDCL 3-12-71
- two sections: SDCL 3-12-71 and 3-12-72
- three or more sections: SDCL 3-12-71 to 3-12-75, inclusive
- a subdivision: SDCL subdivision 2-14-2(18)
- two subdivisions: SDCL 2-14-2(18) and (19)
- three or more subdivisions: SDCL 2-14-2(18), (19), and (23)
- sections connected by "or": SDCL 3-12-71 or 3-12-75

(Note: The way to cite to the codified laws within a section differs from the way to cite to them in the General Authority and Law Implemented portions of the rules.)

References to chapters, articles, and titles are spelled out in the text, followed by the number. Examples are:

chapter 55:10:12
article 55:10
ARSD title 55
SDCL chapter 1-26
SDCL title 32

"Chapter" and "article" are abbreviated in cross-references. See **NOTES**.

The word "section" is not spelled out unless it is used at the beginning of a sentence. In all other cases, use the section symbol. The section symbol in WORD 6.0 is found at Insert, Symbol.

17. LAW IMPLEMENTED. See **GENERAL AUTHORITY AND LAW IMPLEMENTED**.

18. NOTES. Informational notes are not considered part of the rules. They follow law implemented citations and are placed in the order in which they are listed below:

References provide publishing information for material incorporated by reference. See **INCORPORATION BY REFERENCE**.

The following is an example of a reference note:

<p>Reference: National Standard Plumbing Code, 1996 edition, pages numbered by chapter, National Association of Plumbing-Heating-Cooling Contractors. Copies may be obtained from the National Association of Plumbing-Heating-Cooling Contractors, Box 6808, Falls Church, Virginia 22046. Cost: \$45.</p>
--

Collateral References cite to other material such as cases, texts, and other departmental publications which may add to an understanding of the rule. For an example, see § 67:12:05:51.

Collateral Reference: Definition, *King v Smith*, 392 U.S. 309 (1968).

Cross-References direct the reader to the South Dakota Codified Laws or to other rules which may be similar or which may provide further information about the main point of the section. The form for cross-references includes the catchline. For an example, see § 41:06:01:02.

Cross-References:

Combination licenses, SDCL 41-6-10.1, § 41:06:02:01.01.

Basic or general hunting license required, SDCL 41-6-11.

Safety instruction required for licensing of child under sixteen - - Fee waived, SDCL 41-6-16.

Examples illustrate the way the rule is to operate. For an example, see § 64:06:02:81.

Example: A tourist drives a car into a city from Interstate 90 to be repaired and then drives back to the highway to continue the trip. The receipts from the repair are subject to the city's sales tax.

Notes explain the rule or provide additional information. For an example, see § 70:03:01:61.02. Notes may be added by the agency writing the rules or by LRC.

Note: It is recommended that the draw bar length not exceed 8 feet.

19. NUMBERING OF RULES. The LRC will provide title, article, and chapter numbers to agencies writing new rules. Agencies then number the sections according to the organization of the rules.

To add a section between two existing sections, use the number of the section immediately preceding the section to be added and place a two-digit decimal number after it. For example, the new section between §§ 99:99:99:01 and 99:99:99:02 is numbered § 99:99:99:01.01.

Emergency rules have a three-digit number beginning with "1" in front of the title number. For example, if the first number for rules is "5" or "55," the emergency rules are numbered "105" or "155," respectively.

If a section is repealed, the number is not used over again unless the proposed section covers the same topic. Numbers and catchlines of repealed sections are retained and sections following repealed sections are not renumbered. Repealed sections may be dropped if the rules are recodified under other numbers. In unusual cases, repealing rules and reenacting the rules with new numbers may be permitted after checking with LRC.

20. NUMBERS, DATES, AND TIME. Generally, spell out numbers ten and under. Use Arabic numerals for numbers over ten. Spell out dollar amounts under \$11 unless they include cents. If a sentence contains several numbers, some of which should be in Arabic numerals,

use Arabic numerals for all. Numbers following words such as "unit" and "class" should be Arabic numerals.

Do not spell out decimals. Drop zeros from the right side of decimals. Fractions may be spelled out or written in numerals, depending upon readability. Spell out times of the day or use numerals with a colon. The designations "a.m.," "p.m.," "noon," and "midnight" are always lower case. Technical rules and tables may require specific individual styles. Understanding and readability are primary goals. Examples of the style for numbers are as follows:

25	225
52,925	four
ten dollars	25 cents
\$4.30	\$403
\$4,081	\$4,081.34
8:00 a.m	Class 2
one-half, 1/2, .5	12:00 midnight
90 degrees Fahrenheit	45 degrees
October 31	1.3

21. ORGANIZATION. The most common method of organizing rules is to place the rules in the chronological order in which the rules will be used. Within that order, place general material first, and proceed to the more specific. In a definitions section, place the terms in alphabetical order. The subdivisions may be renumbered as definitions are added and deleted.

22. PUNCTUATION. Punctuation used in rules follows accepted punctuation in English. Short, simple sentences avoid the need for punctuation and prevent possible misinterpretation. Extensive punctuation indicates faulty arrangement and ambiguous construction.

Colons should be used to introduce a series and after "Source," "General Authority," "Law Implemented," and other note headings.

Quotation marks should be used around a word being defined, but otherwise should be avoided. Commas and periods are ordinarily placed inside quotation marks, but other punctuation marks are placed outside unless they are part of the quotation.

Semicolons should be used preceding clauses beginning with conjunctions like "however" and after each subdivision of a section except the last.

Periods should be used at the end of the citations and the notes below each section.

Commas should be used instead of **parentheses** to set apart phrases, clauses, or other expressions. A comma should be used before the conjunction in a series.

23. REFERENCES. See **NOTES**.

24. SOURCE NOTES. The source note is the only note that is always provided by LRC. The source note is placed below the text of the rule and above the citations to general authority.

It gives the history of the rule, citing the volume and page number of the South Dakota Register on which the date of filing with the Secretary of State and the effective date are recorded. The source note is retained even though a rule is repealed.

If transferring a section, the agency should add "transferred from § 99:99:99:01" to the source note. See the example in this manual.

25. STATUTES. With the exception of definitions, it is illegal to copy material from the statutes in the rules without permission from the Code Counsel. See SDCL 1-26-6.1 and 2-16-8.1.

26. SUBDIVISIONS. A list of requirements, standards, or definitions is clearer and more readable if it is published in the form of numbered subdivisions. The form is usually used when there are three or more requirements in the list. The form is not usually used when there are two requirements unless there is a specific reason for doing so. The form is never used for one requirement except in a definitions section.

Before subdividing, introduce the list with a complete thought followed by a colon. A rule never starts with a numbered subdivision. The first break into subdivisions is indented and numbered (1), (2), (3), etc. Subdivisions may be broken into further subdivisions. The second break is indented again and indicated by (a), (b), (c), etc. The third break is indented further and indicated by (i), (ii), (iii), etc. All line carryovers are brought back to the left margin.

27. VERBS. The verbs used in rules should be active and in the present tense. They are generally imperative, permissive, or prohibitive. This is a guide to usage:

shall	=	required action
may	=	permitted action
may only	=	restricted action
may not	=	prohibited action
must	=	action required as a condition of something; used with inanimate subjects
must be	=	required condition
is	=	statement of condition

Rules giving discretion to an officer or board through the use of "may" must also establish guidelines to be followed in exercising that discretion. A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation, but not the permission, to act and therefore should be avoided.

28. WORDS AND PHRASES. Do not use made-up words ending in "-ize" or "-ization." Avoid legalisms, jargon, and redundancies. Use shorter, simpler words when you have a choice.

The following words and phrases are often incorrectly used:

AVOID**USE**

aforesaid, aforementioned, before-mentioned	"the," "that," or "those"
afforded or accorded	given
and/or	"either A or B, or both"
any and all	(either word)
as provided in this chapter	(delete)
at such time as	when
at the time of	when
authorized and empowered to	may
be and the same is hereby	is
carry out	"execute" or "complete"
commence	begin
constitute and appoint	appoint
deal with	"address" or "conduct"
deem	consider
deemed to be	is
during such time as	while
during the course of	during
each and all	(either word)
either directly or indirectly	(delete)
employ (meaning to use)	use
every person, all persons	a person
except when otherwise provided	(delete)
expend	spend
fail, refuse, or neglect	fail
feasible	"practicable" or "workable"
following section	§ (fill in number)
formulate	make
for the duration of	during
for the reason that	because
forthwith	immediately
from and after	after
full and complete	full
give consideration to	consider
greater than	more than
have need of	need
hereby	(delete)
hereinafter, hereinbefore, hereinabove, above, below, following, preceding	(these are objectionable when referring to the position of a section or other provision; if reference is necessary, specify the article, chapter, section, or subdivision by number)
in case	if
in order to	to

AVOID	USE
in the event that	if
in the interests of	for
inquire	ask
institute	"begin" or "start"
is able to	can
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is required to	shall
is unable to	cannot
it is a person's duty to	shall
it is lawful to	may
make application	apply
make a determination	"determine" or "decide"
make payment	pay
make provision for	provide for
maximum	most
means and includes	"means" or "includes"
minimum	least
modify	change
necessitate	require
no later than June 30	before July 1
none whatever	"none" or "no"
not later than	before
null and void	void
occasion (verb)	cause
of a technical nature	technical
on or after July 1	after June 30
on or before July 1	by July 1
on a person's own application	upon request
or, in the alternative	or
per (person, year, day)	"a" or "for each"
per annum	a year
per centum	percent
period of time	"period" or "time"
prior to	before
provided (conjunction)	"if" or "but"
provided, however, that	"except," "but," or "however" or start a new sentence

AVOID	USE
provision of law	law
purchase	buy
render (meaning "to make")	make
retain	keep
said	"the," "that," or "those"
same	(the appropriate pronoun)
shall be	is
shall be construed to mean	means
shall be deemed to be	is
shall have the power to	may
shall not	may not
sole and exclusive	exclusive
subsequent to	after
such	"the," "that," or another pronoun
suffer	allow
terminate	end
timeframe	"schedule" or "period"
to wit	(delete or use "namely")
under the provisions of	under
unless and until	"unless" or "until"
until such time as	until
utilize (meaning "to use")	use
when, where (as a condition)	if
whatsoever	whatever
whensoever	"when" or "if"
wheresoever	where
whosoever	whoever
whomsoever	(archaic; improper)

Avoid adjectives such as "real," "true," and "actual" and adverbs such as "duly" and "properly." Since these ideas are normally implied, expressing them creates doubt that they are implied elsewhere. Do not use "adequate," "sufficient," "promptly," "approved," or "reasonable" unless you specify what these words mean or refer to the standards that must be met.

If "such" is used, it requires the addition of "a" before a singular noun, as in "such a person."

PART III: PUBLICATION OF ADOPTED RULES

An agency may publish its adopted rules pursuant to SDCL 1-26-11. Rules are not copyrighted. Agencies may obtain a printing master of the rules through the South Dakota home page on the Internet. Under SDCL 1-26-12, rules must be distributed free of charge to agencies and officials of the state. If an agency has the permission of the Interim Rules Review Committee, the agency may charge the public a fee to recover the cost of publication and mailing. Publications that are sold are subject to sales tax.

If an agency wants to publish statutes with its rules, it must have the permission of the Code Counsel because the statutes are copyrighted. See SDCL 2-16-8.1. Permission to reprint must be obtained each time the statutes are amended. Booklets containing reprints of statutes have to include a copyright notice which is described in the Code Counsel's letter of permission to reprint.

The Legislative Research Council publishes permanent rules pursuant to SDCL 1-26A-1 and 1-26A-8. Agencies may obtain a small number of free copies of the published rules for their own use from the Bureau of Administration. The rules distributed by the Bureau of Administration are available to the public at a cost that covers printing, mailing, and sales tax.

If the cost of a publication that is paid for and distributed by a state agency is over \$100, the publication must contain a statement listing the publisher, the number of copies published, and the approximate cost of publication of each copy.

PART IV: FORM AND STYLE EXAMPLES

EXAMPLE: Format for new rules: title heading and analysis showing new material added, article heading and analysis, chapter heading and analysis, section defining terms for the article, source note, and citations. The section illustrates the form of subdivisions.

TITLE 74

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Article

74:01	General administration, Transferred to Article 74:25.
74:02	Water rights.
74:03	Water pollution control program, Transferred to Articles 74:50 to 74:56, inclusive.
74:04	Water hygiene.
74:05	Water development.
74:06	Reserved.
74:07	Environmental financial assurance.
74:08	Administrative fees.
....	
74:56	Storage facilities -- Remediation.
<u>74:57</u>	<u>Concentrated animal feeding operations.</u>

ARTICLE 74:57

CONCENTRATED ANIMAL FEEDING OPERATIONS

Chapter

74:57:01 Inspections of concentrated animal feeding operations.

CHAPTER 74:57:01

INSPECTIONS OF CONCENTRATED ANIMAL FEEDING OPERATIONS

Section

74:57:01:01 Definitions.

74:57:01:02 Scope.

74:57:01:03 Construction inspections.

74:57:01:04 Annual inspections.

74:57:01:05 Triennial inspections.

74:57:01:06 Closure inspections.

74:57:01:07 Permission.

74:57:01:08 Search warrants.

74:57:01:09 Enforcement.

74:57:01:10 Appeals process.

74:57:01:01. Definitions. Words and phrases defined in SDCL chapter 34A-2 have the same meaning when used in this chapter. Terms used in this chapter mean:

(1) "Manure management system," any piping, containment structures, or disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at a concentrated animal feeding operation; and

(2) "Secretary," the secretary of the South Dakota Department of Environment and Natural Resources or an authorized representative.

Source: 24 SDR 99, effective February 1, 1998.

General Authority: SDCL 1-40-38.

Law Implemented: SDCL 1-40-38, 34A-2-45, 34A-2-46.

74:57:01:02. Scope. The secretary may inspect all concentrated animal feeding operations, records, and reports necessary under SDCL chapter 34A-2 or this article. The scope of an inspection is limited to that reasonably necessary to ensure that pollution of waters of the state and other natural resources is not occurring, that reports filed with the secretary are accurate, and that the operation is being conducted pursuant to the permits, approvals, or orders required by SDCL chapter 34A-2 or this article.

The secretary only has access to the inside of an animal confinement building if access is necessary in order to determine compliance with a water pollution control permit under SDCL chapter 34A-2. If access is necessary, the secretary shall abide by all security measures implemented by the producer to ensure protection of the health of the animals at the animal feeding operation.

Source: 24 SDR 99, effective February 1, 1998.

General Authority: SDCL 1-40-38.

Law Implemented: SDCL 1-40-38, 34A-2-45, 34A-2-46.

EXAMPLE: Amendment of the chapter analysis (table of contents), showing amendments, repeals, and additions.

CHAPTER 67:16:05

HOME HEALTH SERVICES

Section

67:16:05:01	Definition of a home health agency <u>terms</u> .
67:16:05:02	Repealed.
67:16:05:03	Home health services for individuals not eligible for medicare <u>Individuals eligible for home health services.</u>
67:16:05:04	Payments for home health services for individuals eligible for medicare and medicaid <u>Repealed.</u>
67:16:05:05	Home health services payable <u>Covered services.</u>
67:16:05:05.01	<u>Service restrictions.</u>
67:16:05:05.02	<u>Physician's orders required before services begin -- Plan of care -- Certification and recertification.</u>
67:16:05:05.03	<u>Supervisory visit required when home health aide services provided.</u>
67:16:05:05.04	<u>Extended services -- Prior authorization required.</u>
67:16:05:05.05	<u>Respiratory therapy -- Limitations.</u>
67:16:05:05.06	<u>Postpartum services -- Limitations.</u>
67:16:05:06	Home health services <u>Services</u> not covered.
67:16:05:06.01	<u>Medical records.</u>
67:16:05:07	Basis of payment.
67:16:05:07.01	<u>Submission of claims.</u>
67:16:05:07.02	<u>Cost not to exceed institutional care.</u>
67:16:05:07.03	<u>Services provided outside South Dakota.</u>

EXAMPLE: Amended catchline and text and addition of a cross-reference. See the corresponding change in the example of the chapter analysis.

67:16:05:03. ~~Home health services for individuals not eligible for medicare~~
Individuals eligible for home health services. ~~The following home health services are available to individuals not eligible for medicare.~~

~~—— (1) Post hospital services of up to one hundred home visits within one year after the individual's most recent discharge from a hospital in which he was an in patient for not less than three days. The physician shall arrange for these services within fourteen days after the patient's discharge from the hospital and periodically review the necessity for continued visits by the home health agency; and~~

~~—— (2) Payment for one hundred home health agency visits to patients per calendar year for covered home health services without prior hospitalization. The attending physician shall determine the necessity for these services and periodically review the plan for home health services. Home health services are available to an individual in the individual's place of residence. The individual must be eligible for medicaid and the required services must meet the conditions of this chapter.~~

Source: 1 SDR 30, effective October 13, 1974; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Service restrictions, § 67:16:05:05.01.

EXAMPLE: Repeal of a section. See the corresponding change in the example of the chapter analysis.

67:16:05:04. Payments for home health services for individuals eligible for medicare and medicaid. ~~Payments to participating providers for home health services provided to individuals eligible for medicare and medicaid shall be limited to the coinsurance and deductible insurance charges relating to such services~~ Repealed.

Source: 1 SDR 30, effective October 13, 1974; 4 SDR 35, effective December 22, 1977; 5 SDR 109, effective July 1, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

EXAMPLE: Addition of new section between existing sections. See the corresponding change in the example of the chapter analysis.

67:16:05:05.05. Respiratory therapy -- Limitations. An individual receiving home respiratory therapy must meet the following requirements:

(1) Be medically dependent on a ventilator for life support at least six hours a day and must have been dependent for at least 30 consecutive days;

(2) Except for the availability of these respiratory care services at home, would require respiratory care as an inpatient in a hospital, a skilled nursing facility, or an intermediate care facility and would be eligible for long-term nursing care under this article;

(3) Have adequate support services to be cared for at home; and

(4) Wishes to be cared for at home.

Source:

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

EXAMPLE: Amended section with subdivisions. See example of chapter analysis for corresponding change to catchline.

67:16:05:06. ~~Home health services~~ Services not covered. The following ~~home health~~ services are not covered under ~~the medical assistance program~~ this chapter:

- (1) Physician's medical or surgical services;
 - (2) ~~Full time nursing care~~;
 - (~~3~~) Drugs and biologicals;
 - (~~4~~) (3) Personal comfort items;
 - (~~5~~) (4) General housekeeping services;
 - (~~6~~) (5) Meals or other nutritional items delivered to the ~~patient's~~ individual's home;
 - (~~7~~) (6) ~~Post hospital~~ Posthospital benefits which include services by a home health agency operating primarily for the treatment of mental illness;
 - (~~8~~) ~~Transportation involved in furnishing home health services on an out patient basis~~;
- and
- (~~9~~) ~~Physical, occupational, or speech therapy provided for residents in nursing homes.~~
 - (7) Mileage or travel time incurred by the home health agency; and
 - (8) Visits by a dietitian.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

EXAMPLE: Repeal of an entire chapter.

ARTICLE 20:09

HOUSING DEVELOPMENT AUTHORITY

Chapter

20:09:01	Definitions.
20:09:02	Initiated procedures.
20:09:04	General provisions.
20:09:05	Single-family mortgages.
20:09:06	Multifamily rental housing.
20:09:07	Subdivision development mortgages.
20:09:08	Interim construction loans, <u>Repealed</u> .
20:09:09	Single-family portfolio purchases.

CHAPTER 20:09:08

INTERIM CONSTRUCTION LOANS

(Repealed)

~~Section~~

20:09:08:01	Methods of financing.
20:09:08:02	Mortgage limits.
20:09:08:03	Loan inclusions.
20:09:08:04	Mortgage terms.
20:09:08:05	Applications and processing.
20:09:08:06	Bonds and completion assurances.

~~20:09:08:07 Terms and conditions governing the authority's participation with
administrative agents in making interim construction financing loans.~~

~~20:09:08:08 Fees and charges.~~

~~20:09:08:09 Interest rates.~~

NOTE: Print out the entire chapter with overstrikes.

EXAMPLE: Transfer of a section.

CHAPTER 24:03:08

SPECIAL SERVICES

Section

24:03:08:01 Health services.

24:03:08:02 ~~Supportive personnel~~ Transferred.

24:03:08:03 Disaster plan and drills.

24:03:08:02. ~~Supportive personnel.~~ All supportive personnel shall be licensed or trained to perform the specific responsibility assigned. Transferred to § 24:03:05:11.

~~Source:~~ SL 1975, ch 16, § 1; 3 SDR 23, effective September 29, 1976; 5 SDR 110, effective July 5, 1979; 11 SDR 96, 11 SDR 112, effective July 1, 1985.

~~General Authority:~~ SDCL 13-1-12, 13-3-47.

~~Law Implemented:~~ SDCL 13-1-12, 13-3-47.

CHAPTER 24:03:05

INSTRUCTIONAL STAFF

Section

24:03:05:01 Instructional staff.

24:03:05:01.01 In-service education and staff development plan required.

24:03:05:02 Transferred.

24:03:05:03 Guidance counselor.

24:03:05:04 Librarian.

24:03:05:05 Repealed.

24:03:05:06 Teacher aide.

24:03:05:07 Noncertified teacher substitute defined -- Minimum qualifications -- Time limit and procedure for extension -- In-service training required.

24:03:05:08 Certified teacher substitute and temporary administrator defined -- Minimum qualifications -- Time limit and procedure for extension -- In-service training required.

24:03:05:09 Minimum secondary staff requirements.

24:03:05:10 School nurse -- Health services.

24:03:05:11 Support personnel.

~~24:03:08:02~~ 24:03:05:11. Supportive Support personnel. All ~~supportive~~ support personnel shall be licensed or trained to perform the specific responsibility assigned.

Source: SL 1975, ch 16, § 1; 3 SDR 23, effective September 29, 1976; 5 SDR 110, effective July 5, 1979; 11 SDR 96, 11 SDR 112, effective July 1, 1985; transferred from § 24:03:08:02.

General Authority: SDCL 13-1-12, 13-3-47.

Law Implemented: SDCL 13-1-12, 13-3-47.

NOTE: Changes in the data base required to accomplish the transfer must be shown at both the old and new locations of the rule. The changes should be placed in their number order in the set of proposed rules.

EXAMPLE of the transfer of a chapter.

ARTICLE 41:07

FISHING SEASONS AND METHODS

Chapter

41:07:01	General provisions.
41:07:02	Fishing seasons.
41:07:03	Fish limits.
41:07:04	Snagging of salmon, Repealed.
41:07:05	Snagging of paddlefish.
41:07:06	Spearing.
41:07:07	Underwater spearing, <u>Transferred.</u>
41:07:08	Hoop nets and setlines.
41:07:09	Bullfrogs.
41:07:10	Turtles.

CHAPTER 41:07:07

UNDERWATER SPEARING

(Transferred to Chapter 41:07:06)

Section

41:07:07:01	Repealed.
41:07:07:02	Season and area open to taking of largemouth bass.
41:07:07:03	Limits.
41:07:07:04	Season and areas open to taking of catfish without limit.

~~41:07:07:05 — Restricted areas.~~

~~41:07:07:06 — Use of divers down flag.~~

~~**41:07:07:01. Season and areas open to taking of all game fish species. Repealed.**~~

~~**41:07:07:02. Season and area open to taking of largemouth bass.** Legal spearguns may be used in the underwater spearing of largemouth bass during the hours between sunrise and sunset from July 1, 1974, to December 31, 1974, both dates inclusive, in the Pactola reservoir.~~

~~**Source:** SL 1975, ch 16, § 1.~~

~~**General Authority:** SDCL 41-2-32, 41-12-1, 41-12-4, 41-12-12.~~

~~**Law Implemented:** SDCL 41-12-1, 41-12-4, 41-12-12, 41-3-10, 41-12-5.~~

NOTE: Print out the entire chapter with overstrikes.

CHAPTER 41:07:06

SPEARING

Section

41:07:06:01 Spearing of rough fish in inland waters.

41:07:06:02 Spearing of rough fish in South Dakota-Minnesota boundary waters.

41:07:06:03 Areas open to spearing of all species of fish.

41:07:06:04 Season and area open to taking of largemouth bass.

41:07:06:05 Season and areas open to taking of catfish without limit -- Exception.

41:07:06:06 Limits.

41:07:06:07 Restricted areas.

41:07:06:08 Use of diver-down flag.

~~41:07:07:02~~ 41:07:06:04. Season and area open to taking of largemouth bass. Legal spearguns, spears, and bows and arrows may be used in the underwater spearing of largemouth bass during the hours between sunrise and sunset from July 1, ~~1974~~, to December 31, ~~1974~~, inclusive, in the Pactola ~~reservoir~~ Reservoir.

Source: SL 1975, ch 16, § 1; transferred from § 41:07:07:02.

General Authority: SDCL ~~41-2-32~~, 41-2-18, 41-12-1, ~~41-12-4~~, 41-12-12.

Law Implemented: SDCL 41-2-18, 41-12-1, 41-12-5, 41-12-12.

NOTE: Continue by showing the rest of the transfers. Changes in the data base required to accomplish the transfer of the chapter must be shown at both the old and new locations. The changes should be placed in their number order in the set of proposed rules.

Example: Amended section with a delayed effective date.

CHAPTER 12:02:16

CONCESSIONS AND COMMERCIAL EXHIBITS

Section

- 12:02:16:01 License required.
- 12:02:16:02 Contracts for commercial exhibits and concessions.
- 12:02:16:03 Substitute locations.
- 12:02:16:04 Application for space.
- 12:02:16:05 Maps.
- 12:02:16:06 (Effective through September 3, 1995) Reservations. (Effective September 4, 1995) Renewal of space contracts.
- 12:02:16:07 Contracts.
- 12:02:16:08 Payment.
- 12:02:16:09 Expiration of contracts.
- 12:02:16:10 Cancellations by lessee.
- 12:02:16:11 Electrical service.
- 12:02:16:12 Business operations.
- 12:02:16:13 Repealed.
- 12:02:16:14 Advertising.
- 12:02:16:15 Sanitation and appearance.
- 12:02:16:16 Supply trailers.
- 12:02:16:17 Construction of buildings.
- 12:02:16:18 Maintenance of permanent buildings.
- 12:02:16:19 Privately owned buildings.

- 12:02:16:20 Taxes.
- 12:02:16:21 Buildings subject to inspection.
- 12:02:16:22 Prices.
- 12:02:16:23 Access of officials.
- 12:02:16:24 Noncompliance with health or electrical regulations cause for cancellation of contract.
- 12:02:16:25 Temporary wiring for carnivals and shows.

12:02:16:06. (Effective through September 3, 1995) Reservations. The manager shall mail reservations for space requests to previous year's exhibitors and concessionaires by February 1. The forms must be completed and returned to the state fair office by March 1.

(Effective September 4, 1995) ~~Reservations~~ Renewal of space contracts. The manager shall mail ~~reservations~~ applications to renew contracts for space ~~requests~~ to the previous year's exhibitors and concessionaires by ~~February~~ January 1. The forms must be completed and returned to the state fair office by ~~March 1~~ February 1 and must include payment of the first half of space rent.

Source: 2 SDR 74, effective May 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 18 SDR 14, effective July 30, 1991; 21 SDR 213, effective September 4, 1995.

General Authority: SDCL 1-21-10.

Law Implemented: SDCL 1-21-10.

**Example: Addition of a new appendix by amending chapter analysis and a section.
Format for a cover page for the appendix.**

CHAPTER 20:06:13

MEDICARE SUPPLEMENT INSURANCE

Section

20:06:13:01	Repealed.
20:06:13:02	Definitions.
20:06:13:02.01	Requirements for definition of "accident" and similar words in policies.
20:06:13:02.02	Requirements for definitions in policies.
20:06:13:03	Applicability.
20:06:13:04 to 20:06:13:12	Repealed.
20:06:13:13	Coverage of sickness -- Other insurance.
20:06:13:14	Eligible expenses under Medicare.
20:06:13:14.01	Health care expenses defined -- Exclusions.
....	

20:06:13:76 Compliance with data requests.

Appendix A Medicare Supplement Refund Calculation Forms.

Appendix B Form for Reporting Medicare Supplement Policies.

Appendix C Notice to Applicant Regarding Replacement of Medicare Supplement Insurance.

Appendix D Outline of Medicare Supplement Coverage Policies Plans A through J.

Appendix E Instructions for Use of the Disclosure Statements for Health Insurance Policies
Sold to Medicare Beneficiaries that Duplicate Medicare.

20:06:13:31. Notice requirements for policies or certificates that are not Medicare supplement policies. The disclosure notice required by § 20:06:13:30 must be in at least twelve-point type. The notice must be printed on or attached to the first page of the policy, subscriber contract, or certificate or the first page of an outline of coverage under a policy, subscriber contract, or certificate if an outline is provided at the time of application. The notice must contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the 1997 Guide to Health Insurance for People with Medicare available from the company."

Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in § 20:06:13:30 must disclose, using the applicable statement in Appendix E at the end of this chapter, the extent to which the policy duplicates Medicare. Disclosure used by an issuer must be in substantially the same form and in no less than twelve-point type. For purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, line spacing, and usage of boxes around text. The issuer shall provide the disclosure statement as a part of, or together with, the application for the policy or certificate.

Source: 8 SDR 174, effective July 1, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 143, effective March 29, 1989; 17 SDR 58, effective October 29, 1990; 18 SDR 225, effective July 17, 1992; 22 SDR 107, effective February 18, 1996; 23 SDR 236, effective July 13, 1997.

General Authority: SDCL 58-17A-7.

Law Implemented: SDCL 58-17A-7.

Reference: 1997 Guide to Health Insurance for People With Medicare, National Association of Insurance Commissioners and Health Care Financing Administration, U.S. Department of Health and Human Services. Free copies may be obtained from the local Social Security or Health Care Financing Administration Office or the Health Care Financing Administration, 6325 Security Boulevard, Baltimore, MD 21207.

DEPARTMENT OF COMMERCE AND REGULATION

DIVISION OF INSURANCE

INSTRUCTIONS FOR USE OF THE DISCLOSURE STATEMENTS
FOR HEALTH INSURANCE POLICIES SOLD TO
MEDICARE BENEFICIARIES THAT DUPLICATE MEDICARE

Chapter 20:06:13

APPENDIX E

SEE: § 20:06:13:31

Source: 22 SDR 107, effective February 18, 1996; 23 SDR 236, effective July 13, 1997.

APPENDIX E

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for
Health Insurance Policies Sold to Medicare Beneficiaries
that Duplicate Medicare

1. Federal law, P.L. 103-432, prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement must be in substantially the same form and in no less than twelve-point type. For purposes of this section, form means the language, format, type size, type proportional spacing, bold character, line spacing, and usage of boxes around text.
3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. The federal law does not preempt state laws that are more stringent than the federal requirements.
7. The federal law does not preempt existing state form filing requirements.

PART V - PROCEDURE FOR ADOPTING PERMANENT RULES

Notice:

Serve head of department with a copy of SDCL 1-26-4(1)
(1) admission of service (Form 1);
(2) authorization to proceed (Form 2);
(3) proposed rules; and
(4) materials incorporated by reference.

Get written approval to proceed. SDCL 1-26-4(2)

Service on Legislative Research Council (LRC) and Bureau SDCL 1-26-4(2)
of Finance and Management (BFM), publication of notice, 1-26-4(3)
and notice to interested persons must be done at least 20 days
before the hearing.

Service on LRC (two copies) and BFM (one copy) includes: SDCL 1-26-4(2)
(1) admission of service (Form 3 or 4 as applicable);
(2) notice of hearing;
(3) fiscal note;
(4) proposed rules - double spaced;
(5) (LRC only) copies of admission of service on department
secretary and authorization to proceed (Forms 1 and 2);
(6) (LRC only) one copy of any materials incorporated by
reference. The materials will be returned after the review
is complete; and
(7) Small Business Impact Statement (Form 14)

If rules have a negative fiscal impact on local political SDCL 1-26-4.2
subdivisions, ask BFM to send a copy of its fiscal note to
South Dakota Municipal League, Associated School Boards
of South Dakota, and South Dakota County Commissioners
Association.

Publish notice of hearing in a manner selected to notify SDCL 1-26-4.1
persons likely to be affected; minimum legal test is publication 1-26-4(3)
of notice in at least three newspapers of general circulation in
different parts of the state.

Send notice to interested persons. SDCL 1-26-4.1

Comment period:

Accept comments from public and from LRC. SDCL 1-26-4(6)
1-26-6.5

Hold public hearing. If a board or commission has rule-making authority, a majority of the board or commission must be present at the hearing. SDCL 1-26-4(4)

Keep comment period open for ten days following hearing; however, if agency is part-time citizen board or part-time commission, close comment period at end of hearing unless hearing is specifically continued to take additional comments. SDCL 1-26-4(6)

Adoption process:

Make changes in rules after consideration of comments by public; make LRC's recommended changes; changes must be within the scope of the notice. SDCL 1-26-4(4)
1-26-4(7)
1-26-6.5

Have rules signed by the person or a majority of the body with the authority to adopt them (Form 11). SDCL 1-26-6(2)

Serve Rules Committee with minutes of public hearing, complete record of written comments, and final draft of rules after hearing. SDCL 1-26-4(8)
1-26-4.3
1-26-6(1)

Serve final draft of rules with Legislative Research Council and obtain signature of LRC approving the rules for legality and for form and style (Form 11). SDCL 1-26-6(4)
1-26-6.5
1-26-6.6

Appear and present rules to the Interim Rules Review Committee. SDCL 1-26-1.2
1-26-4(8)

Filing with Secretary of State:

File a copy of Form 11 and original certificate Form 13, with the Secretary of State if the agency has appeared before the Rules Committee and minutes and final rules were served on the Rules Committee and if all signatures have been obtained. No more than 75 days may elapse between when the agency's public hearing commences and the rules are filed with the Secretary of State. SDCL 1-26-4.3
1-26-6(1)
1-26-6(5)

Effective date:

Rules are provisionally effective on the 20th day after filing with the Secretary of State. SDCL 1-26-6

Rules are finally effective on July 1 after the next legislative session. SDCL 1-26-6

PROCEDURE FOR ADOPTING PERMANENT RULES

Step 1

Forms 1, 2

Serve proposed rules on department secretary

Step 2

Forms 3, 4, 5, 6, 14

Serve rules, notice, fiscal notes, and impact statement on LRC and BFM

No waiting period

Step 3

Forms 6, 7, 8, 9

Publish notice of hearing and send notice to interested persons

Wait 20 days

Step 4

Form 10

Hold public hearing

Wait 10 days unless the entity promulgating the rules is a board or a multiperson decision maker

Step 5

Form 11

Adopt rules

No waiting period

Step 6

Forms 11, 12

Submit final, adopted rules to LRC for approval signature. Send final rules and minutes of hearing to Rules Committee.

Appear and present rules to the Committee

Step 7

Form 13

File rules and certificate of compliance with Secretary of State

Wait 20 days

Rules are effective

All original documents should be kept in your office except as noted below.

The times shown in the flow chart are the minimums established by SDCL 1-26-4 and 1-26-6. Steps 4 through 7 must be accomplished in 75 days (SDCL 1-26-4.3).

The form numbers in the chart correspond to forms on the following pages. Your agency must create all of these forms, with the exception of Form 5 (BFM 50.10), the fiscal note, which is obtained from the Bureau of Finance and Management, and Form 8, affidavit of publication, which is provided by the newspapers publishing your notice.

Keep the **originals** of all of the documents in your agency files, SDCL 1-26-7. However, the original of Form 13, the certificate, must be filed with the Secretary of State. While it is not required by statute, the Secretary of State has requested that a copy of Form 11 be filed with the rules and the certificate (Step 7).

A more detailed explanation of this entire process is contained in the Administrative Procedures Act, SDCL chapter 1-26.

FORM 1

See SDCL subdivision 1-26-4(1)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

(1) the Board of Metric Conversion's proposed rules §§ 99:01:03:05 and 99:01:03:11 to
99:01:03:14, inclusive, and

(2) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20__.

Secretary of Department of Standards

FORM 2

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AUTHORIZATION TO PROCEED

Pursuant to SDCL subdivision 1-26-4(2), I, _____, Secretary of the Department of Standards, authorize the Board of Metric Conversion to proceed with the promulgation of the proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive.

Dated this ____ day of _____, 20____.

Secretary of Department of Standards

FORM 3

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive,
- (2) the notice of hearing,
- (3) the fiscal note,
- (4) the Small Business Impact Statement, and
- (5) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20____.

Legislative Research Council

For these rules, the Agency contact person is: _____

Phone Number: _____

FORM 4

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive,
- (2) the notice of hearing,
- (3) the fiscal note, and
- (4) the Small Business Impact Statement Form

is hereby admitted at Pierre, South Dakota, this ____ day of _____, 20____.

Bureau of Finance and Management

FORM 5, BFM 50.10

(NOTE: A copy of this form may be obtained from the Bureau of Finance and Management. If your rules have a negative fiscal impact on a local government, such as a county or a school district, you must direct the Bureau of Finance and Management to send a copy of its fiscal note to the organizations listed in SDCL 1-26-4.2.)

ADMINISTRATIVE PROCEDURES ACT FISCAL NOTE Prepared by Submitting Agency

	CODE	NAME
DEPARTMENT		
DIVISION		
PROGRAM		

PROPOSED RULE:

Hearing Date:

FISCAL IMPACT STATEMENT:

Brief description of fiscal impact; (Example: Pursuant to 1-26-402, these rules have minimal impact to all entities. No additional staffing or resources are needed.)

FISCAL NOTE SUMMARY:

List state agencies of local governmental subdivisions affected.

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL		
Local Subdivisions:		
TOTAL		
Small Business Increases (Decreases)		
TOTAL		

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State, Local & Small Business :		
TOTAL		

APPROVED _____ DATE _____
Signature Department Secretary or Board or Commission Chairman

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, and 5) small business impact statement

Revised June 2004

FORM 6
See SDCL 1-26-4.1

Board of Metric Conversion
Notice of Public Hearing to Adopt Rules

A public hearing will be held in Room 412, 4th floor, State Capitol, Pierre, South Dakota, on May 27, 20__, at 10:00 a.m., to consider the adoption and amendment of proposed rules numbered

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive

The effect of the rules will be to require that milk and butter cartons carry their volume and weight, respectively, in liters and kilograms.

The reason for adopting the proposed rules is to ease the conversion to the metric system by making the public aware of metric measurements.

(Note: The notice must contain a narrative description of the effect of the proposed rule and the reason for adopting the proposed rule.)

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Department of Standards, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-1234. Material sent by mail must reach the Department of Standards by May 26, 20__, to be considered.

(Note: If the entity promulgating the rules is not a multiperson decision-maker, the agency shall accept written comments for a period of ten days after the hearing.)

After the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Standards at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-5555.

Copies of the proposed rules may be obtained without charge from the
South Dakota Department of Standards
Room A-418
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

Published at the approximate cost of \$_____.

FORM 7

See SDCL subdivision 1-26-4(3)

Board of Metric Conversions
Department of Standards
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

May 2, 20__

Capital Journal
333 West Dakota Avenue
Pierre, South Dakota 57501

To whom it may concern:

Please publish the enclosed notice in your paper for one issue by May 5, 20__.

Please include your Affidavit of Publication with your invoice.

Sincerely yours,

John Doe
Supervisor

Enclosure

FORM 8

See SDCL 1-26-4.1



Capital Journal

AFFIDAVIT OF PUBLICATION

State of South Dakota, County of Hughes

_____ of said county, being, first duly sworn, on oath, says: That he/she is the publisher or an employee of the publisher of the **Capital Journal**, a daily newspaper published in the City of Pierre in said County of Hughes and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated, that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, that said newspaper has been published within the said County of Hughes and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the legal/display advertisement headed _____

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for _____ successive week(s) to wit:

_____ 19____	_____ 19____
_____ 19____	_____ 19____
_____ 19____	_____ 19____
_____ 19____	_____ 19____
_____ 19____	_____ 19____

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$_____.

Signed: _____

subscribed and sworn to before me this _____ day of _____ 19____

Notary Public in and for the County of _____ Hughes _____, South Dakota.
My Commission expires _____, 20____.

FORM 9

See SDCL 1-26-4.1

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AFFIDAVIT OF MAILING NOTICE
TO INTERESTED PARTIES

I, John Doe, under oath, do swear, that on May 1, 20__, I mailed a copy of the notice attached to this affidavit to the list of persons attached to this affidavit. I further swear that the attached list is a true and correct list of all persons who have requested advance notice of rule-making proceedings by the Department of Standards.

John Doe

Subscribed and sworn to
before me this ____ day
of _____, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.

FORM 10

See SDCL subdivision 1-26-4(8)

BOARD OF METRIC CONVERSION MINUTES OF PUBLIC HEARING

The Board of Metric Conversion convened at 10:00 a.m. on Thursday, May 27, 20__, in Room 412, Fourth Floor, State Capitol, Pierre, South Dakota.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the board numbered 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive, adopted under the authority of SDCL 83-17-22 and 83-17-23.

Hearing Officer: John Smith, Esq., Pierre, South Dakota.

Members of the Board in Attendance: Richard Roe, June Doe, and Charles Coe.

Others in Attendance: James Jones, Pierre; Harold Hanson, Pierre; Mary Smith, Pierre; Dr. O. J. Johnson, Vermillion; Professor Michael Mooney, Brookings; Angela Akins, Sioux Falls; Dr. Cecelia Singer, Rapid City; and Thomas Moore, Aberdeen.

Written Testimony

The hearing officer marked and entered into the record four letters which had been received by the secretary of the board before the hearing. These letters were received from Adam Atkinson, Sioux Falls; Dr. William Webster, Vermillion; Helen Harris, Huron; and Joseph Morgan, Watertown.

Dr. O. J. Johnson, Vermillion, requested that a letter and report from a group of professors from the Mathematics Department, University of South Dakota, be entered into the minutes as an exhibit. The letter was signed by Jane Wells, Ph.D.; Harley Harris, Ph.D.; Oscar Jefferson, M.S.; Laura Linley, Ph.D.; and O. J. Johnson, Ph.D. The letter and report were marked for exhibit and entered in the record of the proceedings.

Oral Testimony

Oral testimony in favor of the proposed rules was presented by James Jones, Mary Smith, Dr. O. J. Johnson, Harold Hanson, Professor Michael Mooney, and Dr. Cecelia Singer.

Angela Akins questioned the advisability of passing the rules at this time. She felt that public acceptance would be poor and that the board should first enter upon a campaign to educate the public before it adopted the rules.

Richard Roe pointed out that the requirement to carry the volume and weight in liters and kilograms was in addition to the usual measurements of quarts and pounds. The board felt that the effect of the new requirement would be one of education of the public.

Thomas Moore said he was in favor of the rules in principle, but he objected to the additional cost to the dairies. The dairies would have to order the printing of new cartons for their milk and butter and he felt that it was unfair to have the dairy industry bear the cost.

Mr. Roe stated that anyone wishing copies of the minutes of board meetings, copies of the letters entered as exhibits, or notices of board meetings could call or write the Office of Metric Conversions.

Respectfully submitted,

Charles Coe
Secretary
Board of Metric Conversions

Adjournment: 11:05 a.m.

FORM 11

See SDCL subdivisions 1-26-6(2) and (4)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

APPROVAL OF RULES

Following public hearing held on May 27, 20__, the following rules, attached, are approved
and will become effective twenty days after filing with the Secretary of State:

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive

Date _____

Date _____

BOARD OF METRIC CONVERSIONS

LEGISLATIVE RESEARCH COUNCIL
(for legality and for form and style)

Richard Roe

June Doe

Charles Coe

Mary Boe

Fred Moe

(NOTE: This form must be signed by a majority of the members of the board or commission. Make only one original copy of this form. If you need extra signed copies, make photocopies after the original has been signed. Have as many signature lines as there are board members. On Form 11 for signature by a department secretary, the name of the department and a signature line for the department secretary are substituted for those of the board in this example.)

FORM 12

See SDCL subdivision 1-26-4(9)

(NOTE: A current list of the members of the Interim Rules Review Committee may be obtained from the Legislative Research Council.)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AFFIDAVIT

I, June Roe, certify that on June 1, 20__, I sent by U.S. mail and electronic mail a correct copy of the following documents adopted by the Board of Metric Conversions on May 27, 20__:

- 1) The minutes of the public hearing (*Form 10*);
- 2) A record of the written comments;
- 3) The small business impact statement (*Form 14*);
- 4) The fiscal note (*Form 5*);
- 5) The financial resource information, if the rules increase a fee; and
- 6) The rules adopted:

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive.

These documents were sent to the Interim Rules Review Committee members at their respective electronic mail addresses listed below:

State Representative Peggy Gibson
peggygibson@hotmail.com

State Senator Angie Buhl O'Donnell
Angie.buhl@gmail.com

State Representative Anne Hajek
annehajek@gmail.com

State Senator Mike Vehle
mvehle@mit.midco.net

and to the following members at their respective U.S. mail addresses listed below:

The Honorable Peggy Gibson
State Representative
1010 Valley View Court
Huron, SD 57350-4221

The Honorable Jean M. Hunhoff
State Senator
2511 Mulligan Drive
Yankton, SD 57078

The Honorable Anne Hajek
State Representative
P.O. Box 1779
Sioux Falls, SD 57101-1779

The Honorable Mike Vehle
State Senator
132 N. Harmon Drive
Mitchell, SD 57301

The Honorable Timothy Johns
State Representative
203 W. Main St.
Lead, SD 57754

Subscribed and sworn to before me this 1st day of June, 20__.

Notary Public - South Dakota

June Roe

(Seal)

My Commission expires: _____.

FORM 13

See SDCL subdivision 1-26-6(5)

(NOTE: This certificate must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules.)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

CERTIFICATE

I, Richard Roe, hereby certify that I am a duly appointed member and the duly elected chair of the Board of Metric Conversions and that the attached instruments are full, true, and correct copies of the following rules adopted by the Board of Metric Conversions on May 27, 20__:

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive

I further certify that SDCL 1-26-4 and 1-26-6 were complied with in the adoption of these rules. These rules will become effective twenty days after filing with the Secretary of State.

Richard Roe, President
Board of Metric Conversions

Subscribed and sworn to
before me this ____ day
of June, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.

FORM 14

SMALL BUSINESS IMPACT STATEMENT FORM

See SDCL 1-26-2.1

(NOTE: This form must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules. A small business is defined as any business with 25 or fewer full-time employees. When a set of rules is proposed, a general summary shall be provided; each proposed rule amendment shall also be explained thoroughly. In the case of a large set of proposed rules which all have a single purpose and impact, one explanation is sufficient. The law makes it clear that agencies or commissions shall use readily available information and existing resources to prepare the impact statement.)

1. Our agency has determined that the rule/s we are proposing have the following type of impact on small businesses:
 - ☐ Direct impact (*please complete remainder of form*)
 - ☐ Indirect impact (*please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered*)
 - ☐ No impact (*please provide a brief explanation, sign, date, and submit form - Questions 2 through 8 do not need to be answered*)
2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:
3. What is the basis for the enactment of the rules(s)?
 - ☐ Required to meet changes in federal law
 - ☐ Required to meet changes in state law
 - ☐ Required solely due to changes in date (i.e. must be changed annually)
 - Other: _____
4. Why is the rule(s) needed?
5. What small businesses or types of small businesses would be subject to the rule?

6. Estimate the number of small businesses that would be subject to the rule.
☐ 1-99 ☐ 100-499 ☐ 500-999 ☐ 1,000-4,999 ☐ More than 5,000
☐ Unknown - please explain _____
7. Are small businesses required to file or maintain any reports or records under this rule?
☐ Yes ☐ No
- a. If "yes," how many reports must a small business submit to the state on an annual basis?
- b. If "yes," how much ongoing recordkeeping within the business is necessary?
- c. If "yes," what type of professional skills would be necessary to prepare the reports or records?
- ☐ The average owner of a small business should be able to complete the reports and/or records with no assistance
 - ☐ It is likely that a bookkeeper for a small business should be able to complete the reports and/or records
 - ☐ It is likely that a small business person would need the assistance of a CPA to complete the reports and/or records
 - ☐ It is likely that a small business person would need the assistance of an attorney to complete the reports and/or records
 - ☐ Other _____
 - ☐ Unknown - please explain _____
8. Are there any less intrusive or less costly methods to achieve the purpose of the rule (i.e. fewer reports, less recordkeeping, lower penalties)?
☐ No - please explain _____
☐ Yes - please explain _____

Dated

Authorized Signature

Name of Agency

PART VI: PROCEDURE FOR ADOPTING EMERGENCY RULES

Notice:

Serve head of department, Legislative Research Council, and Rules Committee with	
(1) proposed rules;	
(2) any materials incorporated by reference (materials incorporated by reference will be returned);	
(3) statement of necessity for emergency procedure;	
(4) notice of intent to adopt emergency rules.	SDCL 1-26-5
Publish notice of intent to adopt emergency rules in at least 3 newspapers of general circulation	SDCL 1-26-5 1-26-4.1
Send notice of intent to adopt emergency rules to interested persons.	SDCL 1-26-4.1

Adoption:

Make Legislative Research Council's recommended changes and any other changes necessary.	SDCL 1-26-6.5
Have rules signed by the person or a majority of the body with authority to adopt the rules.	SDCL 1-26-6(2)
File final rules with Legislative Research Council.	SDCL 1-26-6(4)
Obtain signature of Legislative Research Council approving the rules for legality, for form and style, and for sufficiency of the reasons for the passage of emergency rules.	SDCL 1-26-6(3) 1-26-6.5

Filing with Secretary of State:

If three days have passed since notice of intent to adopt emergency rules was published and if all signatures have been obtained, file original certificate and copy of final rules with Secretary of State.	SDCL 1-26-6(1) 1-26-6(5)
No more than 30 days may elapse between the first service on the Legislative Research Council and filing with the Secretary of State.	SDCL 1-26-4.3

Effective Date:

Rules are provisionally effective immediately upon filing with the Secretary of State.	SDCL 1-26-6 1-26-8
After 90 days rules are void.	SDCL 1-26-8(2)

PROCEDURE FOR ADOPTING EMERGENCY RULES

Step 1

Forms 15 to 19

Serve proposed emergency rules,
notice, and statement of necessity
on department secretary, Legislative
Research Council, and Rules
Committee

No waiting period

Step 2

Forms 18, 20 to 22

Publish notice of intent to adopt
and send notice to interested persons

Wait 3 days

Step 3

Form 23

Adopt rules

No waiting period

Step 4

Form 24

Obtain signatures of
Legislative Research Council

No waiting period

Step 5

Form 24

File rules and certificate
with Secretary of State

No waiting period

Rules are immediately effective

90 days rules automatically expire

The form numbers correspond to forms on the following pages. Your agency must create all of these forms, with the exception of Form 22, affidavit of publication, which is provided by the newspaper publishing your notice.

Keep the **originals** of all of these documents in your agency files, except for the certificate, Form 24, the original of which must be filed with the Secretary of State. While it is not required by statute, the Secretary of State's office has requested that a copy of Form 23 be filed with the rules and the certificate.

A fiscal note and small business impact statement is not required with emergency rules.

The maximum time allowed from Step 1 through Step 5 is 30 days.

FORM 15

See SDCL 1-26-5

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed emergency rules §§ 199:02:01:01 to 199:02:01:10, inclusive,
- (2) the notice of intent to adopt the rules,
- (3) the statement of necessity, and
- (4) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20____.

Secretary
Department of Commerce and Consumer Affairs

FORM 16

See SDCL 1-26-5

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed emergency rules §§ 199:02:01:01 to 199:02:01:10, inclusive,
- (2) the notice of intent to adopt the rules,
- (3) the statement of necessity, and
- (4) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20____.

Legislative Research Council

For these rules, the Agency contact person is: _____

Phone Number: _____

FORM 17
See SDCL 1-26-5

(NOTE: A current list of the members of the Interim Rules Review Committee may be obtained from the Legislative Research Council.)

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

AFFIDAVIT

I, Richard Roe, certify that on June 1, 20__, I sent by U.S. mail and electronic mail a correct copy of the following documents:

- (1) a full, true, and correct copy of emergency rules §§ 199:02:01:02 to 199:02:01:10, inclusive, proposed for adoption by the Board of Metric Conversion,
- (2) a copy of the notice of intent to adopt the rules (*Form 18*), and
- (3) a statement of necessity (*Form 19*).

These documents were sent to the Interim Rules Review Committee members at their respective electronic mail addresses listed below:

State Representative Peggy Gibson
peggygibson@hotmail.com

State Senator Angie Buhl
Angie.buhl@gmail.com

State Representative Anne Hajek
annehajek@gmail.com

State Senator Mike Vehle
mvehle@mit.midco.net

and to the following members at their respective U.S. mail addresses listed below:

The Honorable Peggy Gibson
State Representative
1010 Valley View Court
Huron, SD 57350-4221

The Honorable Jean M. Hunhoff
State Senator
2511 Mulligan Drive
Yankton, SD 57078

The Honorable Anne Hajek
State Representative
P.O. Box 1779
Sioux Falls, SD 57101-1779

The Honorable Mike Vehle
State Senator
132 N. Harmon Drive
Mitchell, SD 57301

The Honorable Timothy Johns
State Representative
203 W. Main St.
Lead, SD 57754

Subscribed and sworn to before me this 1st day of June, 20__.

Notary Public - South Dakota (Seal)
My Commission expires: _____, 20__.

Richard Doe

FORM 18

See SDCL 1-26-5

BOARD OF METRIC CONVERSION

NOTICE OF INTENT TO ADOPT EMERGENCY RULES

Notice is hereby given that the South Dakota Board of Metric Conversion, pursuant to the authority vested by SDCL chapters 1-26 and 36-72, intends to adopt emergency rules to implement statewide conversion to the metric system.

The effect of the rules is to establish the metric system to be used by businesses and schools throughout the state and to set the deadline for conversion.

The reason for adopting the rules is to comply with federal mandates for rapid conversion.

A copy of the proposed rules may be obtained from the

South Dakota Department of Standards
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

Published at an approximate cost of \$_____.

FORM 19

See SDCL subdivision 1-26-5(3)

BOARD OF METRIC CONVERSION

STATEMENT OF NECESSITY FOR EMERGENCY RULE

By enactment of Public Law Number 110-4, the 110th Congress mandated conversion by all states to the metric system by July 1, 2001, and established sanctions for not doing so. The federal rules governing the program were not published until April 15, 20__. The federal deadline for implementation of the law and the sanctions for failing to meet the deadline were not changed.

The time required for promulgation of permanent rules will not allow the state to meet the required deadline; therefore, emergency rules are necessary to meet the federally imposed deadline and to protect the state from federal sanctions.

FORM 20

See SDCL 1-26-4.1

Board of Metric Conversions
Department of Standards
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

May 1, 20__

Capital Journal
333 West Dakota Avenue
Pierre, South Dakota 57501

To whom it may concern:

Please publish the enclosed Notice of Intent to Adopt Emergency Rules in your paper for one issue by May 4, 20__.

Please include your Affidavit of Publication with your invoice.

Sincerely,

John Doe
Supervisor

Enclosure

FORM 21

See SDCL 1-26-4.1



Capital Journal

AFFIDAVIT OF PUBLICATION

State of South Dakota, County of Hughes

_____ of said county, being, first duly sworn, on oath, says: That he/she is the publisher or an employee of the publisher of the **Capital Journal**, a daily newspaper published in the City of Pierre in said County of Hughes and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated, that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, that said newspaper has been published within the said County of Hughes and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the legal/display advertisement headed _____

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for _____ successive week(s) to wit:

_____ 19____	_____ 19____
_____ 19____	_____ 19____
_____ 19____	_____ 19____
_____ 19____	_____ 19____
_____ 19____	_____ 19____

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$_____.

Signed: _____

subscribed and sworn to before me this _____ day of _____ 19____

Notary Public in and for the County of _____ Hughes _____, South Dakota.
My Commission expires _____, 20____.

FORM 22

See SDCL 1-26-4.1

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

AFFIDAVIT OF MAILING NOTICE
TO INTERESTED PARTIES

I, John Doe, under oath, do swear, that on May 4, 20__, I mailed a copy of the notice attached to this affidavit to the list of persons attached to this affidavit. I further swear that the attached list is a true and correct list of all persons who have requested advance notice of the rule-making proceedings of the Department of Standards.

John Doe

Subscribed and sworn to
before me this 4th day
of May, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.

FORM 23

See SDCL subdivisions 1-26-6(2) and (4)

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

APPROVAL OF RULES

Pursuant to notice published as provided by SDCL 1-26-5, the following rules, attached, are approved and will become effective immediately after filing with the Secretary of State:

199:02:01:01 to 199:02:01:10, inclusive

Date _____

Date _____

BOARD OF METRIC CONVERSIONS

LEGISLATIVE RESEARCH COUNCIL
(for legality and for form and style)

Richard Roe

June Doe

Charles Coe

Mary Boe

Fred Moe

(NOTE: This form must be signed by a majority of the members of the board or commission. Make only one original copy of this form. If you need extra signed copies, make photocopies after the original has been signed. Have as many signature lines as there are board members. On Form 22 for signature by a department secretary, the name of the department and a signature line for the department secretary are substituted for those of the board in this example.)

FORM 24

See SDCL subdivision 1-26-6(6)

(NOTE: This certificate must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules.)

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

CERTIFICATE

I, Richard Roe, hereby certify that I am a duly appointed member and the duly elected chair of the Board of Metric Conversion and that the attached instruments are full, true, and correct copies of the following emergency rules adopted by the Board of Metric Conversions on May 7, 20__:

199:02:01:01 to 199:02:01:10, inclusive

I further certify that SDCL chapters 1-26-5 and 1-26-6 were complied with in the adoption of these rules. These rules are effective immediately upon filing with the Secretary of State.

Richard Roe, President
Board of Metric Conversions

Subscribed and sworn to
before me this 7th day
of May, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.